

Order 98-3-33

Served: March 31, 1998



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Issued by the Department of Transportation
on the 31st day of March, 1998

In the matter of the revocation of the interstate and foreign
charter air transportation certificates issued
under 49 U.S.C. 41102 to

**HCL AVIATION, INC.
d/b/a AV ATLANTIC**

pursuant to the provisions of section 204.7 of the
Department's Regulations

**Dockets 47504
47505**

Application of

**HCL AVIATION, INC.
d/b/a AV ATLANTIC**

for an exemption from the 45-day notice provision of
section 204.7 and redetermination of fitness

Docket OST-97-2223

ORDER REVOKING CERTIFICATES AND DISMISSING APPLICATION

Summary

By this order, we are dismissing the application to resume air transportation operations filed by HCL Aviation, Inc. d/b/a Av Atlantic (Av Atlantic) in Docket OST-97-2223, and revoking the carrier's interstate and foreign charter certificates for reason of dormancy.

Discussion

Av Atlantic holds certificates of public convenience and necessity authorizing it to engage in interstate and foreign charter air transportation of persons, property, and mail.¹ The carrier operated under its authority from 1991 until May 13, 1996, when the Federal Aviation Administration (FAA) suspended its authority due to concerns about flight attendant training and records. On May 20, 1996, after addressing the FAA's concerns, the carrier was authorized by

¹ See Orders 91-12-26, issued December 16, 1991, and 92-1-34, issued January 17, 1992.

both the FAA and the Department to resume its operations. Av Atlantic continued flight operations until March 7, 1997, when the FAA suspended the carrier's operating authority and the carrier ceased all of its air transportation operations.²

As a result of its March 7, 1997, suspension of operations, Av Atlantic's economic authority was automatically suspended on that date, pursuant to the provisions of section 204.7 of our regulations. By letter dated March 10, 1997, we reminded Av Atlantic of the provisions of section 204.7 and further advised the carrier that it could not resume operations unless it was redetermined to be "fit, willing, and able" to do so, and that, if it did not have its fitness redetermined within one year of its cessation (or, by March 7, 1998), its authority would be revoked for reason of dormancy as provided for in that rule.

On March 14, 1997, Av Atlantic filed a notice in Docket OST-97-2223 stating that it intended to recommence operations and requested an exemption from the 45-day notice provision of section 204.7.³

After reviewing the information provided by Av Atlantic and other information available to us, by letter dated May 6, 1997, we advised the carrier that we were not persuaded at the time that the company was fit to resume operations. That letter outlined specific concerns relative to Av Atlantic's managerial competence, compliance disposition, and financial resources, and invited Av Atlantic to provide information responding to the issues raised.

During the ensuing months, Av Atlantic provided no information in Docket OST-97-2223 addressing our stated concerns. Because of this, and because the carrier had undergone other changes in the intervening time that led us to expect that most, if not all, of the information filed previously was no longer valid,⁴ by letter dated December 19, 1997, we advised Av Atlantic that we considered its application in Docket OST-97-2223 to be moot.⁵ That letter advised the carrier that, if it intended to resume operations, it must file a new notice of its intent to do so and demonstrate its fitness, and reminded Av Atlantic again that if it did not have its fitness redetermined and resume operations by March 7, 1998, we would revoke its authority at that time without further notice. To date, we have received no concrete information from the carrier indicating its intention to resume operations.⁶

² The FAA suspension order involved matters pertaining to various aspects of the carrier's operations.

³ Subsequently, the carrier filed additional information in support of its fitness to resume operations.

⁴ For instance, the carrier, which had filed for Chapter 11 (reorganization) bankruptcy protection shortly after ceasing operations, was now in Chapter 7 (liquidation).

⁵ We will dismiss the application here.

⁶ From time to time, we have received informal information on the prospective sale of Av Atlantic and/or its assets, including its FAA and Department operating authority. In this regard, we understand that the company's bankruptcy trustee has recently entered into an agreement to sell certain of Av Atlantic's assets, including the rights to the certificates issued by the Department. Notwithstanding this potential transaction, we see no reason to delay our revocation of the carrier's authority. First, Av Atlantic has not requested a waiver of the one-year revocation-for-dormancy provision of section 204.7. In addition, certificates cannot be transferred from one party to another without prior Department approval. Moreover,

In light of these circumstances, we have decided to revoke for reasons of dormancy Av Atlantic's interstate and foreign certificate authority.

ACCORDINGLY, Acting under authority assigned by the Department in its Regulations, 14 CFR 385.12:

1. We revoke the certificate of public convenience and necessity issued to HCL Aviation, Inc. d/b/a Av Atlantic by Order 91-12-26, authorizing it to engage in interstate charter air transportation of persons, property, and mail.⁷
2. We dismiss the application to resume operations filed on March 14, 1997, by HCL Aviation, Inc. d/b/a Av Atlantic in Docket OST-97-2223.
3. We will serve a copy of this order on the persons listed in Attachment A.

Persons entitled to petition the Department for review of this order, under 14 CFR 385.30, may file their petitions within 10 days of the service date of this order.

The action taken in this order shall be effective immediately, and the filing of a petition for review shall not alter its effectiveness.

By:

JOHN V. COLEMAN
Director
Office of Aviation Analysis

(SEAL)

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<http://dms.dot.gov>*

Av Atlantic's section 41102 certificates have no real value. The carrier is currently prohibited from operating under them, and a purchaser of Av Atlantic or its assets would not be able to provide any air transportation operations without first undergoing a complete fitness review. This fitness process would be essentially the same as that of a new applicant for authority.

⁷ By this order we revoke only Av Atlantic's interstate certificate. Revocation of the certificate authorizing it to engage in foreign charter air transportation is subject to Presidential review in accordance with section 41307 of the statute and will be handled in a separate order.